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Supreme Court of the United States

October Term, 1956

No. 756

PETER GRAUERT, et al.,
Petitioners

v.

JOHN FOSTER DULLES, Secretary of State
of the United States,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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Supreme Court of the United States

October Term, 1956

No. .....

PETER GRAUERT, et al.,

v.

JOHN FOSTER DULLES, Secretary of State
of the United States,

PETITION FOR A WRIT OF CERTIORARI

To the United States District Court of Appeals for the District of Columbia Circuit

Counsel for plaintiffs and appellants prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit, dated November 9, 1956.

OPINIONS BELOW

The United States District Court for the District of Columbia (B. Harrison) dismissed the complaint after trial (9A) for lack of jurisdiction and, in the alternative, on the merits (10A). The affirming decision of the United States Court of Appeals for the District of Columbia Circuit is printed in the Appendix hereto.

JURISDICTION

Jurisdiction of the United States Supreme Court is based on 28 U.S.C.A. 1254.

QUESTIONS PRESENTED.

1. Is a justiciable controversy presented if the Secretary of State has refused the registration of the births of American citizens abroad on the ground that they be not citizens by such birth?
2. Is a justiciable controversy presented if a person contends to be a citizen by birth which contention is denied by the Secretary of State while he admits later acquisition of citizenship by naturalization of such person's father?
3. What is the definition of "residence" within the meaning of Sections 601 (g) and 104 of the Nationality Act of 1940 where the purpose of a trip abroad is of merely temporary nature, and return is precluded by outbreak of war?

SUMMARY STATEMENT OF THE CASE

Petitioners were born in Germany in 1941 and 1942, respectively (A. 9(2), 43), as children of an American mother and a German father. (A. 6, 9 (2)) The entire family now resides in the United States (App. 2, 5, 44), the father having been naturalized (A. 2, 5, 6, 43).

The petitioners applied for registration of their births as American citizens, which application was denied by the predecessor in office of the respondent (A. 6, 10(4), 44-45, 60, 61). This decision was again stated in a letter to counsel (A. 62). Finally, respondent in his answer to the complaint (A. 5(6)(6)) denied again that the petitioners are citizens *by birth*.

Pursuant to the Nationality Act of 1940, foreign-born children of one American parent are citizens by birth, if the said parent "resided" ten years in the United States, five of which were after attaining the age of sixteen. The District Court concluded that it be without jurisdiction because there exist no justiciable controversy (App. 10) and stated further that, had it jurisdiction, it would have ruled against appellants on the merits. The United States Circuit Court of Appeals for the District of Columbia Circuit denied jurisdiction.

Petitioners' mother Leila Bernstoff Grauert was born at New York on January 21, 1917 (A. 6 9(2), 10(3), 35, 40) as an American citizen. She lived in the United States all her life (A. 6, 10). In the Spring of 1937, she met Dr. Grauert, who was then engaged in post-graduate studies in New York (A. 36, 13). They became engaged (A. 12, 19, 36), intending to marry in New York (A. 20, 25, 36) and also to settle there (A. 6, 14, 36, 50).—In April 1937, Dr. Grauert was called home by cable (A. 18/19, 25, 36) because of the grave illness of his father who was a physician in Hamburg, Germany (A. 14, 24) and who died shortly thereafter (A. 14, 25, 27, 37). Before leaving, Dr. Grauert obtained from his prospective father-in-law and his professional chief affidavits of support for the purpose of immigration (A. 39, 58). He left whatever clothing and personal property he did not take along in the apartment of his prospective wife and parents-in-law where everything remained until he returned after the war (A. 55).

In May 1937, Mr. and Mrs. Bernstoff together with both their daughters went to Hamburg, Germany, to meet the family of Dr. Grauert (A. 23, 26). Young Dr. Grauert being rather depressed after the demise of his father (27), it was agreed that the marriage should take place right away (A. 37). They got married at Hamburg, Germany, on July 17, 1937 (A. 6, 14, 20, 26, 27). It was still the

present intention of both the bride and Dr. Grauert to return to the United States forthwith (A. 27, 29). There followed a honeymoon in Switzerland and at other places in Europe (A. 17, 27, 38), whereafter the couple stayed for about two months (A. 29), in the house of the mother of Dr. Grauert (A. 20, 27, 38, 46) who was then rather ill (A. 37). The immediate return of the couple was delayed because Dr. Grauert had to attend to settling the estate of his father (A. 6, 15, 20, 22, 28). He had to pass on information on his late father's patients to their new physicians (A. 28-29). Dr. Grauert's negotiations for an internship in the United States were carried on until the Fall of 1937 (A. 49). When it became apparent that the settlement of the estate would still take some time, Dr. Grauert utilized that time by taking additional medical training in Frankfurt, Germany (A. 29, 33). The couple first lived there for 3-4 weeks in a rented room and then in an apartment (A. 46).

Mrs. Grauert had neither her trousseau with her (A. 23, 26), nor any winter clothing (A. 22, 55). In fact, she borrowed winter clothing in Germany (A. 22). The witnesses describe her attitude as follows: She was angry at the lawyer of the estate because of the delay (A. 21), she wanted to return to the United States rather yesterday than today (A. 28), she hated it (A. 29), did not like it (A. 15); her desire to return was intense (A. 23), and she wanted to return as soon as possible (A. 27). On the other hand, Dr. Grauert refused to take over the large practice (A. 16, 21, 38) of his father because of his determination to go back to the United States (A. 14, 21, 28, 38) and he refused a similar opportunity offered by an uncle in Berlin for the same reason (A. 30).

Mrs. Grauert did not improve the little German she spoke (A. 40).

Finally, in December 1937, Mrs. Grauert wrote to her mother for some of her winter clothing (A. 55). And in

January, being homesick (42) she took a ship to New York to prepare for settlement there (A. 31) and to arrange for an apartment (A. 21), while her husband was to follow her (A. 21, 32, 42). By May of 1938, it had become obvious that her husband could still not follow (A. 22, 32) and Mrs. Grauert went back to Germany, because she was pregnant and wanted to have her child in the presence of her husband (A. 16, 32). This first child was born in Frankfurt, Germany in May 1938. (A. 33, 42).

By this time, Mrs. Grauert had become doubtful of the possibility of immediate return because now military exit permits had become required for men of military age like her husband (A. 6, 43). Still, they tried in vain to get such a permit in November, 1938 (A. 43). In January 1939, Mrs. Grauert went to New York a second time for a few months (A. 39) and, in the summer of the same year, her parents visited her in Germany (A. 22, 43). The Grauerts entrusted to them their first child at the age of one, to take her to the United States and keep her there (A. 22, 33, 43). The child never returned to Germany (A. 34). The family came to the United States after the war as soon as they could (A. 23) and are still residing here (A. 48).

There appeared to be no controversy on the facts.

REASONS FOR GRANTING THE WRIT

I

Denial of Justiciable Controversy Where Right of Coercive Action Has Already Accrued

Should this Court grant a writ where, in a citizenship case, a right of action has accrued but the existence of a justiciable controversy has nevertheless been denied below?

The back-ground is the following: Under the regulations of the State Department, as in force at the time here in question [1] and, incidentally, as *still* governing [2], an American citizen, born abroad, is entitled to have his birth registered at the appropriate American consulate [3]. The State Department issued general instructions urging such registration [4] and, as stated in a Circular Instruction to diplomatic and consular officers, said that "the general principles which govern applications for passports also govern applications for registration" [5]. Petitioners' applications for registration of their births was denied on the ground that they were not citizens by birth. This position of the respondent was reaffirmed by letter to counsel [6] and by denial of the allegation in this suit that petitioners are American citizens by birth [7].

It is submitted that the question presented is of general importance and seems to be in conflict with decisions of this Court.

The question is important because the accentuated leadership and involvement of the United States in international affairs has resulted and continues to result in a constant increase of the number of Americans living

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[1] 22 C.F.R. 113.6 (in the 1939 Supplement).

[2] 22 C.F.R. 109.12 (in the 1949 Edition).

[3] The regulation reads as follows:

Registration of Births of Americans Abroad

Consular Officers are required, upon application, to record the births of children to American parents abroad. They should impress upon American citizens resident in their respective districts the desirability and importance of a prompt registration of such births.

[4] Diplomatic Serial 828 of June 10, 1929.

[5] (Oct. 4, 1923): Hackworth III p. 542, 544.

[6] Appendix 62.

[7] Complaint Sec. 5 App. 3; Answer App. 5.

abroad. As a consequence, more and more children are born abroad who have an American parent. Thus, an ever-increasing number of persons will be affected by this decision in their most important right: that of citizenship.

The decision below appears to be in conflict with basic principles of decisions, handed down by this Court. The two decisions in conflict are *Aetna* v. *Haworth*[8] and *Skelly* v. *Phillips*[9]. Chief Justice Hughes said in the former case:

> The dispute is definite and concrete, not hypothetical or abstract. Prior to this suit, the parties had taken adverse positions with respect to their existing obligations . . . . It was a claim of a present, specific right.

How could a conflict be more definite, more concrete, than when the right to coercive action has already accrued, as it has here? And what more, in regard to a specific right, can possibly be required than that granted by respondent's own regulations?

The Skelly case recognized that the Declaratory Judgment Act allows relief even though no immediate enforcement of plaintiff's rights is asked. Thus, the decision below seems also to be in conflict with the Skelly case.

It is respectfully submitted that this first reason for granting the writ should suffice.

II

Denial of Citizenship by Birth as a Justiciable Controversy Per Se.

But even if a specific right (the right to have one's birth registered) had not been denied, and if there had

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[8] 300 U.S. 667, 81 L.ed. 617, 57 S.Ct. 461.

[9] 339 U.S. 667, 94 L.ed. 1194, 70 S.Ct. 876.

merely been a denial of citizenship by birth on the part of the respondent, there would exist not only a justiciable controversy, but a controversy involving so weighty a question that it should be decided by this Court.

A citizen MUST have the right to obtain a determination whether he is a citizen by birth, once such citizenship by birth has been denied by the Secretary of State.

A number of dicta [10] go to the effect that the two classes of citizenship encompass the same rights and duties. This certainly was so as long as the Congress did not enact differentiating legislation.[11] It still is true as to *political* rights and duties. But by enacting legislation providing for denaturalization of naturalized citizens in a manner that does not apply to citizens by birth, a substantial difference has been created. The Nationality Act of 1940 provides in its Section 404 (8 U.S.C.A. § 804) as follows:

> *Expatriation of naturalized nationals by residence abroad*
>
> A person who has become a national by naturalization shall lose his nationality by:
>
> (a) Residing for at least two years in the territory of a foreign state of which he was formerly a national or in which the place of his birth is situated, if he acquires through such residence the nationality of such foreign state by operation of the law thereof; or
>
> (b) Residing continuously for three years in the territory of a foreign state of which he was formerly a national or in which the place of his birth is situated, except as provided in section 406 hereof.

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[10] That all references are *dicta* is discussed in detail at 2 STAN. L.REV. 582 (584).

[11] Compare Morrow, The early American attitude toward naturalized Americans abroad, 30 Am. J. Intl.L. 647.

> (c) Residing continuously for five years in any other foreign state, except as provided in section 406 hereof,

while a citizen by or at birth cannot lose his citizenship except by voluntary expatriation.

The differentiation became the subject of a great number of learned notes and articles[12] and was also recognized by this Court.[13] And in a commentary on the Immigration and Nationality Act by Besterman, Legislative Assistant to the Committee on the Judiciary of the House of Representatives, appearing in 8 U.S.C.A.[14], the following statement is to be found:

> The basic difference in the status of native-born and naturalized citizens with regard to the potential loss of citizenship appears in these provisions of the law that deal with expatriation on the ground of protracted residence outside of the United States.

There are further differences, particularly concerning the treatment of the two classes of citizens: In the methods of according security clearance, naturalized citizens are scrutinized with a great deal more time-consuming thoroughness. Certain Government departments and agencies (State Department, Central Intelligence Agency) even have or had internal policy instructions according to which naturalized citizens were ineligible for appointment until they were naturalized for at least 15, 10 or 5 years, as the case may be.—There are still other disabilities attached to mere naturalization: If an American citizen either by birth or by naturalization resided in enemy territory during the war, his property in the

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[12] 35 Cornell Quarterly 857; 33 Marq. L. Rev. 253; 50 Mich. L.R. 926; 59 Yale L.R. 139.

[13] *Knauer* v. *United States*, 328 U.S. 654 (658 n.), 90 L. Ed. 1500, 66 S. Ct. 1304.

[14] 8 U.S.C.A. p. 1-90 (89).

United States was subject to vesting pursuant to the Trading with the Enemy Act. If he is a citizen *by birth*, he is entitled to return upon his return to the country; if, however, he is a citizen *by naturalization*, this naturalization does not remove his enemy taint retroactively.

The basic difference is and remains anchored in the above-quoted Section 404 of the Nationality Act of 1940, which proviso was adopted in a substantially more stringent form by Section 352 of the Immigration and Nationality Act of 1952.[15]

The question is simply whether a denial of citizenship *by birth*, even if not, as here, accompanied by denial of a specific right, and even if citizenship *by naturalization* is admitted, would contribute a justiciable controversy of sufficient general importance to give cause to this Court to grant the writ.

The importance of the question is accentuated by the fact that there is an ever-increasing number of foreign-born citizens. Even if there were no conflict of decision, it is submitted that this question is so grave as to call for determination by this Court.

However, there is conflict. At least three United States Circuit Courts of Appeal have held that the declaratory procedure should be used to remove uncertainty and insecurity from legal relations[16] and the principal commentators concur.[17] On the other hand, this Court has held that there is no room for a declaration where the con-

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[15] 8 U.S.C.A. Sec. 1484.

[16] *Akron* v. *Barnes* (7th Ct.) 215 F (2) 423; *Delaney* v. *Carter* (10th Ct.) 174 F (2) 314, cert. den. 388 U.S. 824; *Aetna* v. *Quarles* (4th Ct.) 92 F (2) 321.

[17] Anderson, Actions for Declaratory Judgments, 2nd Ed. (1951) I Sec. 14 p. 63 Borchard, Declaratory Judgments (2nd Ed.) p. 58.

flict is "nebulous and contingent" [18] or where the inquiry is "remote and abstract." [19]

This Court has also ruled that the Declaratory Judgment Act permits action even though no immediate enforcement is asked,[20] and the case of Aetna v. Haworth, supra, is authority for the proposition that there is no necessity for accrual of a right to take coercive measures as a prerequisite for declaratory relief.

It seems that delineating criteria should be found and determined. For in the Wycoff case, this Court found the CONFLICT to be nebulous and contingent, while in the Intl. Longshoremen's case, the INQUIRY was held to be remote and abstract.

If the nature of the CONFLICT governs, then the contingency, if any, of damages or enforcement attempts should be irrelevant; if, however, the word "inquiry" should refer to the possibility of damage, rather than to the realities of the conflict itself, an entirely different set of criteria should prevail.

In the case at bar, the conflict is real and present, while the damage is contingent upon the question, for instance, whether the petitioners will ever chose to live abroad.

The Court below termed the controversy contingent and the damage hypothetical, apparently because the petitioners have not taken residence abroad for the period of 2 or 5 years and have not even alleged a desire to do so. Is that necessary? Must the appellants put their citizenship in jeopardy in order to clarify their status?

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[18] *Public Service Commission* v. *Wycoff*, 344 U.S. 237, 97 L.ed. 291, 73 S.Ct. 236.

[19] *Intl. Longshoremen's* v. *Boyd*, 347 U.S. 222, 98 L.ed. 650, 74 S.Ct. 447.

[20] *Skelly* v. *Phillips*, supra, n. 9.

Is it not the very purpose of the Declaratory Judgment Act to determine rights without putting them in jeopardy?

It has been long established that irreparable damage is not a prerequisite for a declaration.[21] Even so, there would be such damage in this case. Consider the case that one of the petitioners gets an offer of a position abroad. Because of the uncertainty of his status, he would either have to refuse the offer, or risk his citizenship. For, obviously, no prospective employer will possibly wait until an action for a declaration, instituted at that juncture, will be finally decided.

It is submitted that these questions are good reason for the grant of the writ.

III

The Residence Question

If the writ is granted, and the question of the existence of a justiciable controversy is answered in the affirmative, the further question will eventually have to be solved whether the facts, as established at the trial, justify the conclusion that petitioners' mother resided within the United States for the requisite period. In the decision of that question, the alternative decision by the District Court shows a conflict: This Court has decided as to a different section of the same Act, that intent is not a factor in regard to such residence.[22] Two Circuit courts have held thereafter that this decision of this court does not apply to Section 601 (g) of the Nationality Act of 1940.[23] Apparently, the question will have to be settled by this Court.

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[21] *Aetna* v. *Haworth*, supra, n. 8. Also *Chattanooga* v. *Wallace*, 288 U.S. 249 (264), 77 L.ed. 730, 53 S.Ct. 345 (348).

[22] *Savorgnan* v. *United States*, 338 U.S. 491, 94 L.ed. 287, 70 S.Ct. 292.

[23] *United States* v. *Karahalias* (1953) (2nd Ct.) 205 F (2) 331; *Acheson* v. *Yee King Gee*, (Oct. 1950) (9th Ct.) 184 F (2) 382.

WHEREFORE, the petitioners submit that a writ of certiorari should be granted to the United States Court of Appeals for the District of Columbia Circuit.

Respectfully submitted,

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APPENDIX

• • • •

Before EDGERTON, Chief Judge, and DANAHER and BASTIAN, Circuit Judges.

EDGERTON, *Chief Judge:* Appellants asked the District Court to declare them to be citizens of the United States by birth. Appellee says they are citizens by naturalization.

We do not reach the merits. We think the court was right in dismissing the complaint for lack of jurisdiction. *Grauert* v. *Dulles,* 133 F. Supp. 836. The federal Declaratory Judgments Act "omits status and limits the declaration to cases of actual controversy" the decision of which will serve "some useful purpose". *Public Service Commission* v. *Wycoff Co.,* 344 U.S. 237, 242, 244. In *McGrath* v. *Kristensen,* 340 U.S. 162, and *Perkins* v. *Elg,* 307 U.S. 325, the plaintiff who claimed citizenship was threatened with deportation. In *Savorgnan* v. *United States,* 338 U.S. 491, the plaintiff who claimed citizenship had applied for and had been refused an American passport. See *Savorgnan* v. *United States,* 73 F. Supp. 109, 111. The complaint in the present case shows nothing of the sort. It shows that the plaintiffs do not "want to risk the consequences of the differentiation between naturalized citizens and citizens by birth in the face of the existing negative determination by defendant." No such consequences appear to have arisen, other than appellee's refusal to give the plaintiffs certain birth certificates that might become useful, in the indefinite future, in circumstances that may never arise. Accordingly judicial consideration and determination, at this time, of the disputed question whether the plaintiffs are citizens by birth or by naturalization, would serve no "useful purpose".

Affirmed.

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In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 756

PETER GRAUERT AND HANS HERBERT GRAUERT, MINORS, REPRESENTED BY THEIR FATHER, DR. HANS GRAUERT, AS NEXT OF KIN AND NATURAL GUARDIAN, PETITIONERS

v.

JOHN FOSTER DULLES, SECRETARY OF STATE OF THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINION BELOW

The opinion of the Court of Appeals (Pet. App. 14) is reported at 239 F. 2d 60. The opinion of the District Court is reported at 133 F. Supp. 836.

JURISDICTION

The judgment of the Court of Appeals was entered on November 9, 1956. The petition was filed on February 7, 1957. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTION PRESENTED

Whether the courts below correctly held that petitioners' complaint, which sought a declaration that they had acquired citizenship by birth rather than by virtue of their father's naturalization but did not allege prejudice in the foreseeable future by reason of their being deemed naturalized citizens, did not present a justiciable controversy.

STATUTE INVOLVED

Section 201 of the Nationality Act of 1940, 54 Stat. 1138–1139 provided:

> The following shall be nationals and citizens of the United States at birth:
>
> * * * * *
>
> (g) A person born outside the United States and its outlying possessions of parents one of whom is a citizen of the United States who, prior to the birth of such person, has had ten years' residence in the United States or one of its outlying possessions, at least five of which were after attaining the age of sixteen years, the other being an alien * * *
>
> * * * * *

STATEMENT

Petitioners were born in Germany in 1941 and 1942 respectively (R. 9, 43), of an American mother and a German father (R. 6, 9–10). The family now resides in the United States (R. 2, 5, 44), the father having been naturalized (R. 2, 5, 6, 43–44). Through next of kin, petitioners filed an amended complaint in the District Court for the District of Columbia on February 3, 1955, asking for a declaratory judgment under

28 U. S. C. 2201 that they were American citizens at birth (R. 2–4). The facts adduced at the hearing were as follows:

Petitioner's mother was born at New York City on January 21, 1917 (R. 35). She lived with her parents in the United States until June 1937 (R. 3, 10). She became engaged to Dr. Grauert, a German national, in April 1937. The couple planned to live in New York, but the serious illness of his father called Dr. Grauert home. (R. 25, 36.)

Dr. Grauert's father died on July 3, 1937, and the Grauerts were married two weeks later in Hamburg (R. 14, 27, 37). Although the couple, according to their testimony, always intended to return to the United States (R. 14, 21, 28, 38, 44, 49–50), Dr. Grauert, allegedly for family reasons, found himself unable to do so (R. 15, 20, 28, 31, 39). Petitioners' grandmother had stated in 1945 that Dr. Grauert had decided in 1937 "to remain in Germany for a few years longer in order to complete his specialized professional training" (R. 65).

In May 1938, Mrs. Grauert gave up the idea of returning to New York in the near future because Germany then required of its citizens exit permits to leave Germany and draft-age men such as her husband were not issued permits (R. 42–43). The two petitioners were born at Frankfurt in 1941 and 1942 respectively (R. 9–10, 43). Dr. and Mrs. Grauert made application for the registration of their two sons as American citizens but such applications were denied by the predecessor in office of the respondent in

1944 on the ground that Mrs. Grauert had not resided in the United States ten years prior to their birth, at least five of which were after attaining the age of 16 [as required by Section 201 (g) of the Nationality Act of 1940, 54 Stat. 1138–1139] (R. 44, 45, 60, 61).

Petitioners became American citizens when their father, who came to the United States after the war (R. 23), was naturalized in 1949 (R. 43–44). In answer to an inquiry by petitioners' counsel in 1952, respondent has repeated that petitioners did not acquire American citizenship at birth because the mother had not resided in the United States for the period required by the statute (R. 62). Petitioners have never applied to respondent for passports after attaining American citizenship by virtue of their father's naturalization (R. 48).

The District Court dismissed the complaint (R. 9), holding that it did not present a controversy within the meaning of the Declaratory Judgment Act and therefore must be dismissed for want of jurisdiction (R. 7). The court also concluded that on the merits petitioners had not met the statutory requirement because their mother had not resided in the United States five years after attaining her sixteenth birthday—residence having been defined by the Supreme Court as the place of general abode (R. 8). The United States Court of Appeals for the District of Columbia affirmed on the ground that no justiciable controversy was presented (Pet. App. 14).

ARGUMENT

Petitioners contend that the courts below improperly construed the Declaratory Judgment Act, 28 U. S. C. 2202, with respect to the requirement that a petition for relief thereunder must present a justiciable controversy. They claim that denial of registration of citizenship by birth to citizens by naturalization constitutes the denial of a specific right cognizable under the Act, regardless of present injury.

The Declaratory Judgment Act, however, did not enlarge the jurisdiction of the federal courts under Article III of the Constitution nor do away with the jurisdictional requirement that an actual controversy exist. *Aetna Life Insurance Co.* v. *Haworth*, 300 U. S. 227. Petitioners' reliance upon *Skelly Oil Co.* v. *Phillips Petroleum Co.*, 339 U. S. 667, is misplaced. While that decision recognized that the Declaratory Judgment Act allows relief although no immediate enforcement of plaintiff's rights is asked, it also recognized that the requisite of federal jurisdiction—an actual case or controversy—must be met.

Here, there is no definite and concrete controversy because no specific right has been denied. A naturalized citizen is not one who has been denied plenary rights of citizenship for there is no second class citizenship in the United States. Petitioners' rights and privileges are no different from those of native-born Americans except in a few factual situations which do not now exist and may never arise. Petitioners have thus failed to show the denial of a specific, enforceable right and, *a fortiori*, the existence

of injury in the foreseeable future as the result of such denial. See *International Longshoremen's Union* v. *Boyd*, 347 U. S. 222 where this Court, in an action by the union and individual members thereof to enjoin the Director of Immigration from construing the Immigration and Nationality Act of 1952 to treat aliens domiciled in the United States returning from temporary work in Alaska as if they were aliens entering the United States for the first time, held the question non-justiciable on the ground that the sanctions of the statute had not been set in motion against individuals who merely expressed an intention to go but had not gone to Alaska. See also *United Public Workers* v. *Mitchell*, 330 U. S. 75, where federal employees who sought a declaration of the unconstitutionality of certain provisions of the Hatch Act of 1940 did not allege violation of the Act or threats of disciplinary action, but only that they desired to engage in political activity. This Court determined that (p. 89):

> * * * the facts of their personal interest in their civil rights, of the general threat of possible interference with those rights by the Civil Service Commission under its rules, if specified things are done by appellants, does not make a justiciable case or controversy.

Here, the only injury claimed is the possibility that, if specific things may be done in the remote future, petitioners' status as naturalized citizens might be jeopardized.

Petitioners cannot bring an action under Section 503 of the Nationality Act of 1940, 54 Stat. 1171[1] (Section 360 of the 1952 Act) because they cannot show the denial of a right or privilege cognizable under this statute. They are seeking to do indirectly what they cannot do directly. Judicial consideration at this time would serve no "useful purpose." *Public Service Commission* v. *Wycoff*, 344 U. S. 237. Thus, decisions by this Court involving declarations of citizenship or eligibility for citizenship have all involved the grant or denial of present rights. For example, in *McGrath* v. *Kristensen*, 340 U. S. 162, 169, there was "an actual controversy between the alien and immigration officials over the legal right of the alien to be considered for suspension." In *Savorgnan* v. *United States*, 338 U. S. 491, the claimant had been refused an American passport. The petitioner in *Perkins* v. *Elg*, 307 U. S. 325, was threatened with deportation.

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[1] "If any person who claims a right or privilege as a national of the United States is denied such right or privilege by any Department or agency * * * upon the ground that he is not a national of the United States, such person * * * may institute an action against the head of such Department or agency * * * for a judgment declaring him to be a national of the United States. * * *"

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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